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5 **UNITED STATES DISTRICT COURT**
6 **DISTRICT OF NEVADA**
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8 BRIAN ROBERTS,

9 *Petitioner,*

10 vs.

11 STATE OF NEVADA,

12 *Respondent.*
13

3:13-cv-00549-RCJ-WGC

ORDER

14 This matter comes before the Court for initial review.

15 Petitioner, a Nevada state inmate, has filed a notice of appeal seeking to appeal to the
16 Ninth Circuit Court of Appeals a March 28, 2012, state court criminal judgment of conviction
17 by the Fifth Judicial District Court in Nye County, Nevada.

18 The papers presented as well as the online docket records of the state supreme court
19 reflect the following.

20 On March 28, 2012, petitioner Brian Anthony Roberts was convicted in Nevada state
21 district court, pursuant to a guilty plea, of mid-level trafficking in a schedule 1 controlled
22 substance. Defense counsel filed a notice of appeal, but it was untimely.

23 On July 26, 2012, in No. 60847, the Supreme Court of Nevada dismissed the appeal
24 as untimely, following review of counsel's response to a show-cause order. The state
25 supreme court noted that petitioner potentially had a valid appeal deprivation claim, and it
26 further noted that such a claim could be raised in a timely state post-conviction petition. The
27 state supreme court's order reflects that it was copied both to counsel and to petitioner in
28 proper person.

1 On January 9, 2013, in No. 62342, the Supreme Court of Nevada dismissed a second
2 untimely appeal from the judgment of conviction. The state supreme court again noted that
3 petitioner may have had a valid appeal deprivation claim that could be raised in, as the court
4 emphasized, “a timely post-conviction petition.” The court noted that petitioner had filed a
5 motion for appointment of counsel in the state district court but that no action yet had been
6 taken on the motion. The state supreme court directed the state district court “to resolve any
7 of appellant’s attempts to have counsel appointed.” The state supreme court order was
8 copied both to counsel and to petitioner in proper person.

9 On August 1, 2013, in No. 63376, the Supreme Court of Nevada dismissed a third
10 appeal from a purported June 7, 2013, district court order. The state supreme court noted
11 that there was no oral or written order reflected on the state district court docket for June 7,
12 2013. The court further noted that to the extent that petitioner was seeking to appeal an April
13 9, 2013, order denying a motion for leniency, such an order was not appealable. The state
14 supreme court order was copied to both a – differently-named – counsel and to petitioner in
15 proper person.

16 This Court now is presented with a notice of appeal filed in the federal district court
17 seeking to appeal to the Ninth Circuit a state district court judgment of conviction. No filing
18 fee or pauper application was presented with the filing. The federal courts do not have
19 jurisdiction over the sole party named, the State of Nevada. The state sovereign immunity
20 recognized by the Eleventh Amendment bars suit against the State in federal court,
21 regardless of the relief sought. *See, e.g., Pennhurst State School & Hospital v. Halderman*,
22 465 U.S. 89, 100-01 (1984). Nor do the federal courts have jurisdiction to entertain a direct
23 appeal sought from a state court judgment, including a judgment of conviction, as opposed
24 to a collateral attack via a federal petition for a writ of habeas corpus. *See, e.g. Rooker v.*
25 *Fidelity Trust Co.*, 263 U.S. 413 (1923); *Bianchi v. Rylaarsdam*, 334 F.3d 895, 898 (9th Cir.
26 2003).

27 The Court nonetheless must docket and at least initially process the appeal filed, which
28 seeks to appeal to the Ninth Circuit, not this Court. It would appear, however, with deference

1 to the authority of the Court of Appeals to determine its own jurisdiction, that there is no
2 jurisdiction over the appeal. The Court accordingly will both deny a certificate of appealability
3 and certify to the Court of Appeals that the appeal is not taken in good faith assuming,
4 *arguendo* pauper status, as a similar appeal by a non-indigent party also would be dismissed
5 for lack of jurisdiction.

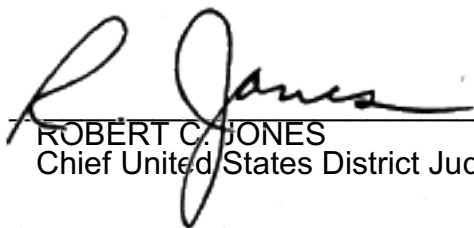
6 IT THEREFORE IS ORDERED that the Clerk of Court shall process the appeal filed
7 by petitioner as an appeal to the Ninth Circuit Court of Appeals, noting that the filing fee for
8 neither a civil action nor an appeal has been paid and further that petitioner has neither
9 applied for nor been granted pauper status.

10 IT FURTHER IS ORDERED, that pursuant to 28 U.S.C. § 1915(a)(3), the Court
11 certifies that the appeal is not taken in good faith and that the Court further denies a certificate
12 of appealability as, with deference to the authority of the Court of Appeals in matters
13 concerning its own jurisdiction, there clearly would appear to be no jurisdiction over this
14 appeal or action. The Clerk shall note these actions in the docket entry for this order.

15 IT FURTHER IS ORDERED that this order CLOSES this improperly commenced action
16 in this Court, subject to any order of the Court of Appeals on the docketed appeal.

17 The Clerk shall SEND petitioner two copies each of a pauper application for an
18 incarcerated person and § 2254 noncapital petition form, one copy of the instructions for each
19 form, and one copy of the papers that he filed. Any further pleadings filed by petitioner must
20 be filed in a new action under a new docket number.¹

21 DATED: This 16th day of October, 2013.

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25 ROBERT C. JONES
26 Chief United States District Judge

27 ¹There are no claims asserted in this action as to which later claims could relate back. All pleadings
28 filed must be filed in a new action under a new docket number. The only matter pending in the current matter
is an improvidently-filed appeal to the Ninth Circuit.